

November 16, 2011

The Honorable Jeff Hoover  
House Minority Leader  
700 Capitol Ave  
Capitol Room 314  
Frankfort, KY 40601

Dear Representative Hoover,

Thank you for the work you, your staff, and your colleagues in the Kentucky Legislature have done to support military and overseas voters. As you know, the Federal Voting Assistance Program (FVAP) is the Department of Defense office charged with implementing the *Uniformed and Overseas Citizens Absentee Voting Act* (UOCAVA), as amended by the 2009 *Military and Overseas Voter Empowerment Act* (MOVE Act). Since the passage of the MOVE Act, State lawmakers and election officials have gone to great lengths to improve voting rules and procedures for military and overseas voters. To date,

- At least 23 States have codified the MOVE Act's 45-day prior transmission requirement into State law, with others pending.
- For the 2010 General Election, 31 States tested web-based tools designed to help military and overseas voters fill out registration and ballot request forms online, and for some States, to access a blank ballot through a secure, online download.
- Six States have adopted the Uniform Law Commission's model legislation.
- All but four States have eliminated witness and notary requirements for military and overseas voters.

These developments will help expand opportunity for military and overseas voters to participate in U.S. elections. There is, however, still more that can be done. With that in mind, I want to discuss the FVAP Legislative Initiatives. Each year, FVAP contacts the Chief Election Officer and the legislative leadership in each State to recommend Legislative Initiatives that, once enacted, will expand opportunity for military and overseas voters to participate in U.S. elections.

As you know, the Kentucky Legislature did not act on UOCAVA issues in 2011. To further expand opportunity for military and overseas voters and to improve their voting experience, FVAP recommends Kentucky adopt the following measures in statute or regulation:

- **Codify the 45-Day Transmission Deadline.** Kentucky statutes currently require ballots to be printed at least 50 days prior to each election (KRS 117.145(1)), but are silent on when to transmit ballots to military and overseas voters. FVAP recommends each State codify the 45-day requirement in State law (statute or administrative rule) and authorize the Chief Election Official or another State official to enforce the requirement should

local election officials not meet the 45-day deadline. FVAP has found State officials, once authorized to enforce the requirement, are able to remedy unexpected events—and get ballots to voters—sooner and with less hassle than States requiring federal enforcement actions. *This Legislative Initiative has been revised for 2012.*

- **Expand Electronic Transmission Options for Ballot Access.** Kentucky currently employs both email and fax to provide, or “push,” election materials to voters. FVAP recommends Kentucky also adopt a method that would allow voters to obtain, or “pull,” election materials at their own convenience. For example, “pull” methods allow voters to go to an election website, and “pull” or download their ballot. Having both “push” and “pull” electronic transmission is important because some military information systems automatically block emails from non -military third parties or block access to non-governmental email systems. Further, many military voters do not know their overseas military email address before deploying. *This Legislative Initiative has been revised for 2012.*
- **Expand use of the Federal Write-In Absentee Ballot (FWAB).** Kentucky currently only counts the FWAB in general elections for federal office, the bare minimum requirement of federal law. Given the inherent delays in sending ballots by mail, the FWAB represents the only ballot readily available for many of these voters. Universal adoption of the FWAB will standardize the “emergency ballot” process for military and overseas voters reduce confusion as to which form to use, and allow election officials to focus their education on a single form and its processes for timely return.
- **Enact the Uniform Law Commission (ULC) model legislation.** The ULC, an interstate commission made up of State legal experts, has presented the “Uniform Military and Overseas Voters Act” (UMOVA) for adoption by the States. FVAP supports the Commission in this endeavor, and recommends the States adopt the Act. To date, six States have adopted UMOVA. The sheer diversity of individual election laws regarding Uniformed Services and overseas voters is, in and of itself, a serious hindrance to these voters successfully exercising their franchise. Uniformity and standardization of voting laws for the Uniformed Services and overseas voters would substantially ease the burden of compliance, improve voter success, and would help reduce the variation in terms and procedures between States.
- **Permit Late Registration.** Recently discharged Uniformed Service members and their accompanying families or overseas citizens returning to the U.S., may become residents of a State just before an election, but not in time to register by the State’s deadline and vote. The adoption of special procedures for late registration would allow these citizens to register and vote in the upcoming election.
- **Enfranchise citizens who have never resided in the U.S.** Some voting age children of military and overseas voters have never resided in the U.S. Kentucky should permit these citizens to vote using their parents’ former addresses.

These recommendations are more thoroughly outlined in the attachment below. I have also included a chart of each State's adoption of FVAP's recommendations.

Please do not hesitate to contact my staff or me. We will be happy to provide research, sample language, or testimony—anything that will assist you in serving military and overseas voters.

Sincerely,

Bob Carey  
Director, Federal Voting Assistance Program

Enclosures:

1. 2012 Legislative Initiatives and Sample Language
2. Chart: 2012 Legislative Initiatives by State

cc:

The Honorable David L. Williams  
The Honorable Greg Stumbo  
The Honorable R.J. Palmer  
The Honorable Elaine Walker

## 2012 FVAP Legislative Initiatives for Kentucky

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In addition to the explanation of need for each of the Legislative Initiatives detailed below, draft legislative language is provided. This language is derived from the legislative language provided in the Uniform Military and Overseas Voters Act (UMOVA), drafted by the Uniform Law Commission in June 2010. A complete copy of the model legislation can be found at [www.umova.org](http://www.umova.org). A copy of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) as amended by the Military and Overseas Voter Empowerment (MOVE) Act is available at: <http://www.fvap.gov/resources/media/uocavalaw.pdf>.

Note: An updated 55-State /Territory Legislative Initiative comparison chart is available at: (Website address TBD by 15 November 2011).

### 45-Day Ballot Transit Time

*This Legislative Initiative has been revised for 2012.* Ballots must be sent 45 days prior to the election in order to provide adequate time for voters to receive, vote, and return ballots. Despite the requirement of Express Mail ballot return for overseas military ballots, significant delays in postal mail delivery of ballots still occurs. For example, while the average military mail delivery time to the Middle East is 11-14 days, this is only to the military post office. Follow on delivery to combat outposts and forward operating bases can add another seven to 10 days to the total transit time. For ships at sea, 20 additional days are not unusual. For ballot return, although ballots were returned in an average 5.2 days from overseas military post-offices using the Express Mail services, the delays to the remote locations discussed above still exist. For overseas citizens, the transition between foreign postal services and the US Postal Service can be complex, generating their own delays.

Additionally, accepting and counting absentee ballots that were cast up to Election Day, but received after the election, would further enfranchise these voters. Some States also chose to transmit ballots to voters more than 45 days before the election.

FVAP recommends each State codify the 45-day requirement in State law (statute or administrative rule) and authorize the Chief Election Official or another State official to enforce the requirement should local election officials not meet the 45-day deadline. FVAP has found State officials, once authorized to enforce the requirement, are able to remedy unexpected events—and get ballots to voters—sooner and with less hassle than States requiring federal enforcement actions.

### Sample Language

*For any general, special, [presidential preference,] [runoff,] or primary election for federal office; any general, special, [recall,] [runoff] or primary election for statewide or state legislative office [or state ballot measure]; any general, special, [recall,] [runoff] or primary election for local government office [or local ballot measure] conducted under [insert state law] [for which absentee voting or voting by mail is available for other voters], not later than 45*

*days before the election the official charged with preparing and distributing ballots and balloting materials in each jurisdiction shall transmit ballots and balloting materials to all absent uniformed services voters and overseas voters who by that date have submitted a valid military-overseas ballot application. If a ballot application from an absent uniformed services voter or overseas voter arrives after the jurisdiction begins transmitting ballots and balloting materials to voters, the official charged with distributing ballots and balloting materials shall transmit these materials to the voter not later than two business days after the application arrives.*

## **Email and Online Transmission of Voting Materials**

*This Legislative Initiative has been revised for 2012.* FVAP recommends States employ multiple electronic means to transmit voting materials to, and communicate with, voters. Specifically, each State should offer military and overseas voters multiple electronic means to receive their ballot, including a way to provide (“push”) ballots to voters and a way that allows voters to obtain (“pull”) ballots from specified web servers. An example of “push” means is emailing a PDF of the blank ballot. “Pull” methods allow voters to go to an election website, and after inputting an identification code, “pull” or download their ballot. States should also expand their use of email, social media and online systems to communicate with voters throughout the voting process, including the transmission of registration and ballot request materials.

Email and online capabilities are widely available eclipsing the usefulness of faxing. After a September 2008 visit to military bases in the Middle East, Asia and Europe, a delegation of six State Chief Election Officials reported that “...reliance on fax machines to speed the voting process... is largely unworkable for deployed troops,” and that visited military personnel “indicated a strong preference for, and almost universal access to, email or internet based voting procedures.” Additionally, FVAP’s experience in the 2006 through 2010 election cycle indicates that email or online deliveries alone are insufficient to reach all voters; for example, different military information technology networks block user access to third-party email systems, and the voter’s deployed military email address may not have been known when the Federal Post Card Application was submitted. Conversely, some voters have access to email but not to web surfing services. Providing ballots by both systems substantially improves the likelihood that a voter will be able to receive their ballot electronically.

### **Sample Language**

*An absent uniformed services voter or overseas voter may apply for registration and an absentee ballot by electronic transmission, if otherwise qualified to apply for and vote by absentee ballot. An absent uniformed services voter or overseas voter who requests that ballots and balloting materials be sent to the voter by electronic transmission may choose facsimile transmission or electronic mail delivery, or if offered by the voter’s jurisdiction, Internet delivery. The election official in each jurisdiction charged with distributing a ballot and balloting materials shall transmit the ballot and balloting materials to the voter using the means of transmission chosen by the voter.*

## Expanded Use of Federal Write-In Absentee Ballot

FVAP continues to encourage and assist Uniformed Service and overseas voters to greatly increase the use of the Federal Write-in Absentee Ballot (FWAB). Given the inherent delays in sending ballots by mail, the FWAB represents the only ballot readily available for many of these voters. Therefore, FVAP recommends States expand the use of the FWAB to include simultaneous registration, ballot request, and voted absentee ballot for federal, State and local offices for the elections required by the MOVE Act: general, primary (including Presidential Preference primary), special, and runoff. In expanding the use of the FWAB in this manner, individually-developed State Write-In Ballots will no longer be needed, and FVAP recommends they be replaced with the FWAB alone. Universal adoption of the FWAB will standardize the “emergency ballot” process for military and overseas voters, reduce confusion as to which form to use, and allow election officials to focus their education on a single form and its processes for timely return.

### Sample Language

*(1) An absent uniformed services voter or overseas voter may use a Federal Write-In Absentee Ballot, in accordance with the provisions of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff, to vote for all offices in any general, special, primary, or runoff election for Federal, State, or local government office, or a ballot measure.*

*(2) An absent uniformed services voter or overseas voter may use the declaration accompanying a federal write-in absentee ballot to apply to register to vote simultaneously with the submission of the federal write-in absentee ballot[, if the declaration is received by [insert this state’s voter registration deadline for that election]]. [If the declaration is received after that date, it must be treated as an application to register to vote for subsequent elections.]*

## Adoption of Recommendations of the Uniform Law Commission

The Uniform Law Commission (ULC), an interstate commission made up of State legal experts appointed and elected by their State governments or commissions, has presented the “Uniform Military and Overseas Voters Act” (UMOVA) for adoption by the States. FVAP supports the Commission in this endeavor, and recommends the States adopt the Act. To date, six States have adopted UMOVA. The sheer diversity of individual election laws regarding Uniformed Services and overseas voters is, in and of itself, a serious hindrance to these voters successfully exercising their franchise. Uniformity and standardization of voting laws for the Uniformed Services and overseas voters would substantially ease the burden of compliance, improve voter success, and would help reduce the variation in terms and procedures between States. This model legislation is endorsed by the Alliance of Military and Overseas Voting Rights, the American Bar Association, and the Council of State Governments, as well as being included in the Council’s list of Suggested State Legislation.

Some States currently have statutory provisions that go beyond the recommendations of the UMOVA, providing greater opportunities for military and overseas voters. While FVAP encourages adoption of the UMOVA language for uniformity, care must be taken to avoid

regressing by adopting legislation that is less than what is already provided by State law. FVAP and the Uniform Law Commission both stand ready to assist States in legislative drafting to optimize both voter opportunity and standardization. Further information on UMOVA is available at [www.umova.org](http://www.umova.org).

### **Sample Language Notes**

*DOD, including FVAP and the Defense State Liaison Office staff, as well as the Uniform Law Commission, nationally and in the various states, stand ready to assist States in legislative drafting and passage of UMOVA in the various States to optimize both voter opportunity and minimum standardization.*

*UMOVA is best passed by minimal amendment to the draft act as a whole, rather than trying to lift the language and place it in various places in a State Code. This is one of those situations where “the whole is greater than the sum of the parts.” Further information on the UMOVA draft language is available at [www.umova.org](http://www.umova.org).*

### **Late Registration Procedures**

Recently discharged Uniformed Service members and their accompanying families or overseas citizens returning to the U.S., may become residents of a State just before an election, but not in time to register by the State’s deadline and vote. The adoption of special procedures for late registration would allow these citizens to register and vote in the upcoming election.

### **Sample Language**

*An individual who has been discharged or separated from the Uniformed Services, the Merchant Marine, an accompanying family member, or a citizen who is returning from outside the United States, too late to register by the regular State deadline shall be entitled to register and vote in that election if they so notify the registrar for the address at which they claimed as their residence prior to the discharge or return to the United States before the day of the election, and if they would otherwise have been qualified to register to vote.*

### **Enfranchise Citizens Who Have Never Resided in the U.S.**

Many U.S. citizens, who have never resided in a State or territory, are not entitled to vote under current State law. These citizens are voting age children of U.S. citizens who are eligible to vote under UOCAVA. Absent the decisions made by these children’s parents to reside overseas, these disenfranchised children of military and overseas voters would likely otherwise be allowed to vote. Therefore, FVAP urges these U.S. citizens be allowed to vote in elections for Federal offices in the State in which either parent is eligible to vote under UOCAVA.

### **Sample Language**

*(a) An overseas voter who, before leaving the United States, was last eligible to vote in this state and, except for a state residency requirement, otherwise satisfies this state’s voter eligibility*

*requirements.*

*(b) An overseas voter who, before leaving the United States, would have been last eligible to vote in this state had the voter then been of voting age and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements.*

*(c) An overseas voter who was born outside the United States, is not described in paragraph (a) or (b), and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements, if: (1) the last place where a parent or legal guardian of the voter was, or under this [act] would have been, eligible to vote before leaving the United States is within this state; and (2) the voter has not previously registered to vote in any other state.*

*(d) In registering to vote, an overseas voter who is eligible to vote in this state shall use and must be assigned to the voting [precinct] [district] of the address of the last place of residence of the voter in this state, or, in the case of a voter described by Section 2(1)(E), the address of the last place of residence in this state of the parent or legal guardian of the voter. If that address is no longer a recognized residential address, the voter must be assigned an address for voting purposes.*